

REMARKS

Election of Invention

In the Action of 10 June 2011, the Office required an election of one of the following inventions under 35 U.S.C. § 121:

Group I, claim(s) 1-6, 8, 9 and 20-29, drawn to a method to obtain a wheat plant with improved yield properties wherein said method comprises the steps of (a) construction of an F1 wheat plant; (b) the permanent application of a high concentration of sunlight with no spectrum filter; and (c) the germination of the resulting seeds.

Group II, claim(s) 7 and 10-19, drawn to a plant obtained by a method comprising the steps of (a) construction of an F1 wheat plant; (b) the permanent application of a high concentration of sunlight with no spectrum filter; and (c) the germination of the resulting seeds.

In response to the Office's restriction requirement, Applicants provisionally elect with traverse Group II, claims 7 and 10-19, drawn to a plant obtained by a method comprising the steps of (a) construction of an F1 wheat plant; (b) the permanent application of a high concentration of sunlight with no spectrum filter; and (c) the germination of the resulting seeds.

Applicants reserve the right to Petition the Director for review of the Restriction Requirement under 37 C.F.R. §1.181 (see 37 C.F.R. §1.144; MPEP §818.03(c)). Applicants note that such petition may be deferred until after final action on or allowance of claims to the invention elected, but must be filed not later than appeal (37 C.F.R. §1.144; MPEP §818.03(c)).

In electing the above invention, Applicants reserve the right to request REJOINER under MPEP § 821.04 of process claims that depend from or otherwise require all limitations of an allowable product claim.

In electing the above invention, Applicants reserve the right to rejoin subcombination claims requiring all limitations of the elected invention, upon a finding of allowability of any claim of the elected invention (see 37 C.F.R. 1.104; MPEP §821.04(a)).

Applicants respectfully traverse, and request reconsideration, of the restriction of invention Groups I and II as lacking **Unity of Invention**. The Office asserts that Group I and Group II lack the same or corresponding technical features and are directed to multiple processes, and as such, are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The requirement of unity of invention is fulfilled when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features (PCT Rule 13.2). "Special technical features" are those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art (PCT Rule 13.2). The unity of invention determination is made without regard to whether the inventions are claimed in separate claims or as alternatives within a single claim (PCT Rule 13.3). Unity of invention can be satisfied where dependent claims, claiming specific forms of the invention claimed in an independent claim, could be considered as constituting in themselves an invention (PCT Rule 13.4).

The claims recite growing a wheat plant under a "high concentration of sunlight with no spectrum filter" throughout inflorescence development so as to generate "genetic variability" and identifying "stable variants of a different chromosomal number" (see e.g., claims 1 and 20), along with wheat plants generated by such technique (see e.g., claim 7). In contrast, the Office cites Reynolds et al. 2000, which discloses the use of physiological parameters associated with photosynthetic rate (e.g., light saturated net carbon exchange rate (A_{max}), stomatal conductance, canopy temperature depression (CTD), ratio of Rubisco carboxylase to oxygenase activity (V_c/V_o)) to select for

increased radiation use efficiency (RUE) in wheat. But Reynolds et al. 200 does not disclose using a high concentration of sunlight to induce genetic variability and subsequent selection of stable variants having different chromosomal number.

For at least the above reasons, invention group I and Group II do share a special technical feature making a contribution over the prior art. As such, claims 1-29 are so linked as to form a single general inventive concept and should be examined together.

CONCLUSION

Applicants believe that the claims as presented represent allowable subject matter. If the Examiner desires, Applicants welcome a telephone interview to expedite prosecution. Applicants petition the Office for a 5 month extension of time and submit herewith the requisite extension fee paid by credit card via EFS-Web. The Commissioner is hereby authorized to deduct any deficiency not covered by this credit card payment or credit any overpayments to SNR Denton US LLP with respect to this response to Deposit Account No. 19-3140.

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Date

Respectfully Submitted,

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